

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICARDO INC.,

Plaintiff,

-against-

VIA MOTORS, INC., WIRELESS ADVANCED
VEHICLE ELECTRIFICATION, LLC d/b/a
WAVE CHARGING, and IDEANOMICS, INC.

Defendants.

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Case No. 1:23 Civ. 9390

COMPLAINT

Plaintiff Ricardo Inc. (“Ricardo” or “Plaintiff”), as and for its Complaint herein against defendants Via Motors, Inc. (“Via”), Wireless Advanced Vehicle Electrification, LLC d/b/a Wave Charging (“Wave”) and Ideanomics, Inc. (“Ideanomics”) (collectively, “Defendants”), alleges as follows.

Nature Of The Action

1. This is an action for breach of contract. Ricardo provided consulting and other services to defendants Via and Wave, both of which, upon information and belief, have been acquired by defendant Ideanomics. Ricardo has outstanding invoices to Defendants in the total amount of \$1,355,964.24 which Defendants have refused to pay, despite due demand.

The Parties, Jurisdiction and Venue

2. Ricardo is a corporation organized under the laws of the State of Michigan, with its principal place of business in Detroit, Michigan.

3. Upon information and belief, Via is a corporation organized under the laws of the State of Utah, with its principal place of business located at 165 Mountain Way Drive, Orem, Utah 84058.

4. Upon information and belief, Wave is a limited liability company organized under

the laws of the State of Utah, with its principal place of business located at 4752 W. California Ave Ste 8-400, Salt Lake City, Utah 84104. Upon information and belief, Wave's sole member is Ideanomics, a corporation organized under the laws of the State of Delaware, with its principal place of business at 1441 Broadway, Suite 5116, New York, NY 10018.

5. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332.

7. This Court has personal jurisdiction over Defendants for several reasons. First, in Section 6.6 of the Contractor Agreement dated July 31, 2020 (the "Contractor Agreement"), Ricardo and Via agreed that "[a]ny litigation between the Parties concerning this Agreement or its subject matter shall be conducted exclusively in state or federal courts in New York". Second, in Section 20.2 of the Standard Terms and Conditions for The Supply of Services dated March 22, 2022 ("Terms and Conditions"), Ricardo and Wave agreed that "the parties submit to the exclusive jurisdiction of New York Courts". Third, Ideanomics is a citizen of this State, and, upon information and belief, owns and/or is the successor-in-interest to Via and Wave.

8. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) and (3) because Ideanomics resides in this District and/or because Via and Wave are subject to personal jurisdiction in this District.

Facts Common To All Claims

9. As set forth in a letter to Via dated June 5, 2023 (Exhibit A hereto), Ricardo performed consulting services for Via regarding an Electric Skateboard Design Project and a Chassis Buck Build project pursuant to the parties' Contractor Agreement (Exhibit B hereto),

which is governed by New York law. As set forth in such letter, five invoices have been issued to Via in the total amount of \$1,213,322.50 (the “Via Invoices”; Exhibit C hereto). The Via Invoices are well past due and no payment has been made whatsoever.

10. As set forth in another letter dated June 5, 2023 (Exhibit D hereto), Ricardo performed consulting services for Wave regarding a Manufacturing, Design and Cost Optimization Project pursuant to the Terms and Conditions between the parties, each executed by Wave on March 22, 2022 (Exhibits E and F hereto). The Terms and Conditions are governed by New York law. As set forth in such letter, two invoices have been issued to Wave in the total amount of \$142,641.74 (the “Wave Invoices”; Exhibit G hereto). The Wave Invoices are well past due and no payment has been made whatsoever.

11. Upon information and belief, Ideanomics purchased Via and Wave, is a successor-in-interest to Via and Wave, and/or has joint and several liability for Via’s and Wave’s respective debts, liabilities, and obligations to Ricardo.

12. There is no legitimate excuse for the failure to pay the amounts due. Indeed, Defendants have admitted the amounts are due. For example, in an email to Ricardo dated June 12, 2023 from Scott Morrison, Chief Financial Officer of Wave and now Chief Financial Officer of Ideanomics, Mr. Morrison wrote: “We are intent in paying down our obligations – for Via and WAVE – to Ricardo” (Exhibit H hereto). Although Mr. Morrison references making payment upon receiving certain funding, Defendants have been making similar promises for many months, with no amounts being paid to Ricardo.

13. By letter to Defendants dated August 31, 2023, counsel for Ricardo demanded payment of the full amounts due (Exhibit I hereto). However, as of the present date, Defendants have failed to make any payment whatsoever.

14. Accordingly, Defendants owe Ricardo an amount to be determined at trial, but believed to be not less than the total sum of \$1,355,964.24, plus interest at the New York statutory rate of 9%, plus costs or attorneys' fees as allowable by law.

FIRST CAUSE OF ACTION

(Breach of Contract, against Via and Ideanomics)

15. Ricardo repeats and realleges each and every allegation set forth above as if fully set forth herein.

16. The Contractor Agreement is an enforceable agreement between the parties.

17. Via breached the Contractor Agreement by failing to pay the amounts due thereunder.

18. Ideanomics is jointly and/or severally liable as the successor-in-interest to Via.

19. Ricardo substantially performed its obligations under the Contractor Agreement and any related agreements.

20. As a consequence of the foregoing, Ricardo has suffered damages in an amount to be determined at trial, but believed to be not less than \$1,213,322.50.

SECOND CAUSE OF ACTION

(Breach of Contract, against Wave and Ideanomics)

21. Ricardo repeats and realleges each and every allegation set forth above as if fully set forth herein.

22. The Terms and Conditions is an enforceable agreement between the parties.

23. Wave breached the Terms and Conditions by failing to pay the amounts due thereunder.

24. Ideanomics is jointly and/or severally liable as the successor-in-interest to Wave.

25. Ricardo substantially performed its obligations under the Terms and Conditions and

any related agreements.

26. As a consequence of the foregoing, Ricardo has suffered damages in an amount to be determined at trial, but believed to be not less than \$142,641.74.

THIRD CAUSE OF ACTION

(Account Stated, against Via and Ideanomics)

27. Ricardo repeats and realleges each and every allegation set forth above as if fully set forth herein.

28. As set forth above, Via and/or Ideanomics failed to pay Ricardo the total amount due of \$1,213,322.50 on the outstanding Via Invoices, despite due demand. This amount is immediately due and owing.

29. Thus, there is an account stated between the parties.

30. Via and/or Ideanomics did not object to such Via Invoices and/or account stated within a reasonable time. To the contrary, as set forth above, they have admitted the amounts are due and have made promises to pay.

31. Accordingly, as a consequence of the foregoing, Ricardo has suffered damages in an amount to be determined at trial, but not less than \$1,213,322.50.

FOURTH CAUSE OF ACTION

(Account Stated, against Wave and Ideanomics)

32. Ricardo repeats and realleges each and every allegation set forth above as if fully set forth herein.

33. As set forth above, Wave and/or Ideanomics failed to pay Ricardo the total amount due of \$142,641.74 on the outstanding Wave Invoices, despite due demand. This amount is immediately due and owing.

34. Thus, there is an account stated between the parties.

35. Wave and/or Ideanomics did not object to such Wave Invoices and/or account stated within a reasonable time. To the contrary, as set forth above, they have admitted the amounts are due and have made promises to pay.

36. Accordingly, as a consequence of the foregoing, Ricardo has suffered damages in an amount to be determined at trial, but not less than \$142,641.74.

FIFTH CAUSE OF ACTION

(Unjust Enrichment, in the Alternative, against Via, Wave and Ideanomics)

37. Ricardo repeats and realleges each and every allegation set forth above, as if fully set forth herein.

38. Via's, Wave's and/or Ideanomics' receipt and retention of the services provided by Ricardo and the amounts due therefore, without paying Ricardo the total amount due of \$1,355,964.24 has conferred an unearned and undeserved benefit upon Via, Wave and/or Ideanomics, allowing them to enrich themselves unjustly and at the expense of Ricardo. It is against equity and good conscience for Defendants to retain such respective sums and/or benefits without compensation to Ricardo.

39. Accordingly, as a consequence of the foregoing, Ricardo has been damaged in an amount to be determined at trial, but not less than \$1,355,964.24.

WHEREFORE, Ricardo demands judgment as follows:

- (i) On the First Cause of Action, awarding Ricardo an amount to be determined at trial, but believed to be not less than \$1,213,322.50, plus 9% statutory interest, costs, and attorneys' fees to the extent allowable by law;
- (ii) On the Second Cause of Action, awarding Ricardo an amount to be determined at trial, but believed to be not less than \$142,641.74, plus 9% statutory interest, costs, and attorneys' fees to the extent allowable by law;
- (iii) On the Third Cause of Action, awarding Ricardo an

amount to be determined at trial, but believed to be not less than \$1,213,322.50, plus 9% statutory interest, costs, and attorneys' fees to the extent allowable by law;

(iv) On the Fourth Cause of Action, awarding Ricardo an amount to be determined at trial, but believed to be not less than \$142,641.74, plus 9% statutory interest, costs, and attorneys' fees to the extent allowable by law;

(v) On the Fifth Cause of Action, awarding Ricardo an amount to be determined at trial, but believed to be not less than \$1,335,964.24, plus 9% statutory interest, costs, and attorneys' fees to the extent allowable by law; and

(vi) for such other and further relief as the Court deems just and proper.

Dated: New York, New York
October 25, 2023

SULLIVAN & WORCESTER LLP

By: /s/ Gerry Silver

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